No. 36

In the Supreme Court of the United States

OCTOBER TERM, 1944

MICHAEL F. McDONALD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The findings of fact and opinion of The Tax Court of the United States (R. 115a–118a) are reported at 1 T. C. 738. The opinion of the Circuit Court of Appeals (R. 122a–126a) is reported at 139 F. 2d 400.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 9, 1943 (R. 127a). The petition for a writ of certiorari was filed on March 8, 1944, and granted on April 10, 1944 (R. 128a). The jurisdiction of this Court is in-

voked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. May the incumbent, by the Governor's interim appointment, of a state judicial office deduct a contribution to the party campaign fund and expenses incurred by him in connection with his unsuccessful campaign for election for a full term beginning immediately upon the expiration of the term to which he had been appointed, either—

a. As ordinary and necessary expenses paid in carrying on a trade or business within the meaning of Section 23 (a) of the Internal Revenue Code, as reenacted by Section 121 of the Revenue Act of 1942; or

b. As expenses paid for the production of income within the meaning of Section 23 (a) of the Internal Revenue Code, as amended by Section 121 of the Revenue Act of 1942; or

c. As a loss incurred in trade or business or in a transaction entered into for profit within the meaning of Section 23 (e) of the Internal Revenue Code?

2. Did the Tax Court err in excluding evidence and in making inadequate findings of fact?

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set out in Appendix A, *infra*, pp. 37–40.

STATEMENT

The facts as stipulated (R. 28a–30a) and as found by the Tax Court (R. 115a–116a) may be summarized as follows:

The taxpayer, a resident lawyer of Pennsylvania, was appointed by the Governor of Pennsylvania on December 1, 1938, to fill an unexpired term as a judge of the Court of Common Pleas for the Eleventh Judicial District of Pennsylvania, which district is coextensive with Luzerne County (R. 28a, 115a–116a). The office carried an annual salary of $12,000. At the time of his appointment the taxpayer agreed to be a candidate for the full ten-year term beginning January 1, 1940, immediately after the expiration of the term to which he had been appointed. He was a candidate to succeed himself, in both the primary and the general elections of 1939. He won in the primary but was defeated in the general election (R. 116a).

In order to get the support of the Democratic organization of Luzerne County, the taxpayer had to pay the amount "assessed" by the subcommittee of the Democratic Party. Each of the candidates gave the local treasurer authority to expend his contribution, and expenditures from the fund were principally on behalf of all the candidates. The taxpayer contributed $8,000 to the party fund and in addition expended on his own behalf $5,017.27 for advertising, traveling, and

other expenses in connection with his campaign. He received a contribution of $500 from his son for the purpose of defraying part of his campaign expenditures (R. 116a).

In his income-tax return for the taxable year 1939 (R. 105a–111a), which was filed on a cash receipts and disbursements basis, the taxpayer deducted $13,017.27 as "reelection expenses." The Commissioner disallowed the deduction and found a deficiency in tax of $2,506.77 (R. 115a). The Tax Court sustained the deficiency in tax (R. 119a) and the Circuit Court of Appeals affirmed (R. 127a).

SUMMARY OF ARGUMENT

I

A decision in petitioner's favor would by no means solve the problem to which he points, of the allegedly deterrent effect of income taxes upon the willingness of individuals to become candidates for elective office. A decision which was limited to expenditures by incumbents seeking to succeed themselves would leave untouched the problem of those seeking office for the first time. A distinction between the two types of candidates would, moreover, be indefensible from a policy standpoint. The question of what constituted "ordinary and necessary" campaign expenses, should they be held deductible, would, moreover, be constantly presented to the Commissioner of

Internal Revenue without satisfactory guidance to its solution. The problem relates to the general one of expenditures in election campaigns, which has been recognized as difficult for many years. Neither its general phases nor its tax aspect can be satisfactorily treated except in carefully devised legislation.

II

The taxpayer has failed to sustain the burden, which rests upon him, of establishing his right to the deduction which he claims. The issue, moreover, is of such a nature that the decision of the Tax Court should receive great weight.

a. The taxpayer's expenses were not incurred in carrying on a trade or business. Performance of the functions of a public office constitutes a business, but campaigning for office is not included in it. Expenditures in the course of a campaign are "personal" and as such are expressly made nondeductible. They are analogous to expenditures which an individual makes in order to equip himself for a trade or profession, which have uniformly been held to be nondeductible. The nondeductibility of campaign expenses is confirmed by a consistent administrative construction of the statutory provisions involved which has obtained for nearly a quarter of a century. There is abundant evidence of congressional acquiescence in that construction.

b. The retroactive provision of the Revenue Act of 1942 for the deduction of expenses incurred for the production of nonbusiness income adds nothing to the taxpayer's case. That provision was intended to permit the deduction of definite types of nonbusiness expenses which the decisions in *Van Wart* v. *Commissioner*, 295 U. S. 112, and *Higgins* v. *Commissioner*, 312 U. S. 212, had disclosed as nondeductible under existing provisions, although the resulting income was taxable and the expenditures themselves were similar in all respects to those incurred in the course of a business. The amendment did not enlarge the concept of trade or business or the category of business expenses, nor did it create a vague new category of deductible expenditures which would in effect have amended the express prohibition of Section 24 (a) (1) of the Internal Revenue Code upon the deduction of personal expenses. If Congress had intended to provide for the deduction of expenses incident to an attempt to acquire a status such as that of holding public office, it would have given the matter explicit attention and would have used words appropriate to that end.

c. The taxpayer's contention does not receive any support from the loss provisions of the statute. Personal expenses are expressly nondeductible "in any case," and may not be deducted in the guise of a loss. Moreover, the taxpayer probably gained prestige and political standing of unmeasurable

value from the campaign, even though he lost the election. He fails to give any consideration to this factor. From the standpoint of the legislative problem which he stresses, moreover, a deduction upon the loss theory would permit campaign expenses to be deducted by a losing candidate but not by one who was successful in the election—a result which is itself a strong reason for concluding that the loss provision of the statute has no application.

III

Since no expenses of a political campaign are deductible, it is unnecessary to consider the assignment of error with regard to the Tax Court's exclusion of evidence relating to whether the expenses in question were ordinary and necessary in the sense of being of common occurrence in political campaigns.

ARGUMENT

I

THE LEGISLATIVE PROBLEM TO WHICH PETITIONER CALLS ATTENTION WOULD NOT BE SOLVED SATISFACTORILY BY JUDICIAL DECISION UNDER THE TAX LAWS AS THEY NOW STAND, EVEN IF THE APPLICABLE PROVISIONS WERE SUSCEPTIBLE OF THE INTERPRETATION WHICH THE PETITIONER SEEKS TO PLACE UPON THEM

The petition and brief of the petitioner stress the importance, in his view, of the deterrent effect which the need for campaign expenditures has upon potential candidates for elective office, when

to the expenditures themselves are added income taxes at the rates now being levied.[1] It is argued that because of this factor the applicable provisions of the Internal Revenue Code should be so interpreted as to permit the deduction of his campaign expenditures from his income for 1939.

A decision in petitioner's favor would, however, by no means solve even the Federal income tax aspects of the problem to which he points. Petitioner concedes as much by arguing that the case of an incumbent seeking to succeed himself in office is different from that of one who aspires to an office for the first time;[2] for a decision based

[1] It should be pointed out in this connection that income taxes cannot be a burden and cannot have a deterrent effect upon candidates, actual or potential, except insofar as they enjoy incomes which bring them into the taxable brackets. Inability to deduct campaign expenses can have no greater adverse effect upon an individual than the amount of his tax, which in many instances is small.

[2] Petitioner's brief is not entirely consistent upon this point. In much of it, however, reliance is placed upon the fact that he was in office at the time of the primary and election campaigns and was seeking to "continue in" (Pet. Br. 3, 7, 12, 21) or "retain" (*id.* 5, 11, 12, 25) his office as against those who sought "to deprive him of it" (*id.* 12), despite his decision not to "voluntarily abandon" it (*id.* 21). This language suggests a revival of the theory, never embraced in American law except in a few anomalous cases, see Stoner, *Legislating the Incumbent Out of Office* (1914) 12 Mich. L. Rev. 293, and definitively repudiated when suggested, *Taylor & Marshall* v. *Beckham*, 178 U. S. 548, 576; *Wetzel* v. *McNutt*, 4 F. Supp. 233 (S. D. Ind.), that the incumbent of a public office can have any kind of vested right in it other than such as may be secured by constitution or statute. Petitioner

upon this ground would leave untouched the cases of candidates not occupying such a position.[3] It would, in addition, introduce a discrimination in favor of incumbents as against aspirants to office which would be completely indefensible.

The present case cannot be decided without reference to the framework in which it arises and the implications that would flow from its decision.[4] Assuming that a decision in favor of the petitioner were placed upon the broad ground that the ordinary and necessary expenses of all candidates may be deducted, which is the only defensible ground from a policy standpoint upon which it could be based, it would nevertheless raise a host of problems to which it would provide no solutions.

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had no greater claim to be "continued" in his office beyond his term, and no greater warrant for spending money to achieve that end, than any other candidate had to secure his election.

[3] Such a decision would, also, raise numerous questions to which only a long course of litigation could supply answers, unless the problem were taken in hand by the legislature. What, for example, should be said of the expenditures of an official who sought election to a more desirable office? Would it make a difference whether the office being sought were of a different variety from the one already occupied? What would be the effect of an attempt to secure election to an office in a different unit of government? And so on.

[4] The only unusual factor in the petitioner's case is his promise to the Governor who appointed him that he would be a candidate at the next election (R. 416a). Such a promise is not an enforceable agreement and does not alter the terms upon which the promissor holds his office. In any event, it does not change the nature for tax purposes of the campaign expenditures which may later be made.

The question of what constituted "ordinary and necessary" campaign expenses for income tax purposes would constantly be presented to the Commissioner of Internal Revenue. With respect to States which, like Pennsylvania,[5] define the permissible categories of expenditures by statute, the Commissioner would no doubt be guided by the applicable legislative prescriptions; but as respects other States[6] he would be compelled to make rulings which it would be difficult for him to render and which would embroil his office in political controversy. He would also be required (*infra*, p. 28) to determine the income derived by candidates from contributions. Congress has refrained from requiring any such functions of him. It is inconceivable that it would do so without providing adequate statutory guides for him to follow.[7]

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[5] Election Code, sec. 1606, as amended, 25 Pa. Stat. Ann. (Purdon, Supp. 1944) sec. 3226, Petitioner's Brief, p. 37.

[6] According to a compilation of corrupt practices acts published in 1937 as S. Doc. No. 11, 75th Cong., 1st sess., 20 States at that time did not include an enumeration of permissible campaign expenditures in their statutes. The remaining 28 States did.

[7] It cannot be validly argued that the guidance which would be supplied by the words "ordinary and necessary" would be adequate, merely because these words have been relied upon for determining those expenditures of other varieties which are deductible for income tax purposes. Political expenditures are more directly fraught with a public interest than many others; they relate directly to government; and their character is better known to elected legislatures; and is of greater interest to them, than other types of expenses. The need of legislative guidance in dealing with them, whether for tax purposes or for others, is correspondingly greater.

The truth is that, as the Court knows, the problem relating to expenditures in election campaigns and to the sources of the funds expended has been an object of national interest and concern and a subject of recurring legislative study in Congress since 1904.[8] Such is the difficulty and complexity of the problem,[9] however, that Federal legislative

For the difficulty of reaching a decision on the propriety of campaign expenses, see, for example, Hearings before the Committee on Election of President, Vice President, and Representatives in Congress on H. J. Res. 139, etc., 67th Cong., 2d sess., pp. 14 *et seq.*; 67 Cong. Record, Part 11, p. 12475; *cf.* S. Res. No. 2, 70th Cong., 1st sess. (69th Cong. Record, Part 1, p. 337).

[8] James K. Pollock, *Party Campaign Funds* (1926), p. 7. Valuable Congressional hearings and reports with respect to the matter include the following:

Hearings before the Committee on Election of the President, etc., of the House of Representatives: Contributions to Political Committees in Presidential and Other Campaigns, 59th Cong., 1st sess.

Report of the House Committee on Election of the President, Vice President, and Representatives in Congress, H. Rep. No. 5082, 59th Cong., 1st sess.

Report of the Committee on Election of President, etc., to accompany H. Res. 256, H. Rep. No. 677, 63rd Cong., 2d sess.

Hearings before the Committee on Election of President, etc., of the House of Representatives, on H. J. Res. 139, etc., 67th Cong., 2d sess.

[9] Pollock, *op. cit.*, contains a good discussion of the numerous considerations which must enter into a solution to the problem that would (1) permit sufficient funds to be raised and expended, (2) guard against harmful types of campaign contributions and expenditures, and (3) insure adequate publicity. The discussion deals largely with party funds as distinguished from those raised and expended by individual candidates; but the two are of course closely related.

regulation has not gone beyond limited reuirements for publicity,[10] prohibitions upon certain types of political contributions,[11] and a limit upon the election expenditures of candidates for Congress.[12] State legislation, which has led the way in this field,[13] has proceeded somewhat farther in a number of States.[14] Most of the laws are merely restrictive, however, and the problem of the financial difficulties of candidates, to which petitioner calls attention, has received very little legislative treatment.[15]

Because of the same difficulties which have held back legislation dealing directly with election ex-

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[10] Corrupt Practices Act, 43 Stat. 1071, c. 368, Secs. 304–307, 2 U. S. C. Secs. 244–247.

[11] *Idem*, Sec. 313, as amended by 57 Stat. 167, c. 144, Sec. 9; 2 U. S. C., Supp. III, Sec. 251.

[12] *Idem*, Sec. 309, 2 U. S. C. Sec. 248. The limitation does not apply, however, to important types of necessary expenditures, which may be large in amount in populous States.

[13] Pollock, *op. cit.*, pp. 8–9, 12, 234–236.

[14] The State statutes summarized in S. Doc. No. 11, 75th Cong., 1st sess., footnote 16, *supra*, are in a number of instances quite comprehensive, embracing, in addition to the points covered in Federal legislation, the enumeration of permissible expenditures previously referred to and such matters as the composition and management of political committees, methods of soliciting funds, regulation of political advertising and certain other campaign practices, and specific requirements for the statements of expenditures required to be filed.

[15] State assistance in printing political advertising during campaigns is the only form of aid to candidates thus far attempted. Minault, *Corrupt Practices Legislation in the 48 States* (1942), p. 12. See Pollock, *op. cit.*, pp. 104–107. Much more extensive assistance has at times been envisaged. *Idem*, pp. 102–104, 108–109.

penditures, the Congress has so far refrained from making provision in the income tax laws for the deduction of campaign expenses from income.[16] It is worthy of note that, likewise, no state legislature has undertaken to make any such provision and that all reported rulings of state tax officials which have dealt with the topic have been to the effect that campaign expenditures are not deductible under the laws as they stand.[17]

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[16] *Infra*, pp. 22–28.

[17] *Alabama*. Op. Atty. Gen. Jul. 7, 1941; summarized, Ala. PH par. 11,470.11, *semble*.

Arizona. Regulations No. 1, Art. 562, Arizona PH par. 10,413; Arizona Code (1939) § 73–1510, Ariz. PH par. 12,141.

Iowa. Regulations, Art. 140, Iowa PH par. 10,465–Q; Iowa Code (1939) § 6943.041(1), Iowa PH § 12,053.

Kansas. Departmental Rulings of State Tax Commission, Rule 9, Kan. PH par. 16,813; Kan. Gen. Stat. (1935) § 79–3296 (a), (14), 3207 (a) (1), Kan. PH par. 12,005, 12,006.

Kentucky. Op. Atty. Gen. Oct. 30, 1941, summarized, Ky. PH par. 13,016; Ky. Rev. Stat. (1942) §§ 141.080 (1), 141.090 (1), Ky. PH pars. 12,585, 12,611.

Minnesota Regulations, Art. 14–1, *Minn.* PH par. 10,760; *Minn.* Stat. (Mason, 1927) § 2394–13 (a), 2394–14 (a), *Minn.* PH par. 12,161, 12,201.

New York. An opinion of the Attorney General, Oct. 30, 1939, summarized in N. Y. PH par. 55,830, held that campaign expenses are not incurred for the production of income represented by a salary attached to the office sought, but are personal expenses and not deductible. This holding was made under a statutory provision (Tax Law, § 360 (1), set forth in full in N. Y. PH par. 59,160) like that embodied in the 1942 amendment to the Federal law (Int. Rev. Code, Sec. 23 (a) (2), infra, Appendix A). The opinion had the effect of perpetuating the rule of nondeductibility early announced under statutory provisions like those of the Federal law be-

It is clear, therefore, that the problem to which petitioner points, of the deterrent effect of income taxation upon the willingness of candidates to come forward for elective offices, has not resulted in a modification in any American jurisdiction of the long-understood rule that campaign expenditures are not deductible from income for tax purposes. The complex nature of the still larger problem of regulating the raising and spending of campaign funds, to which the more limited tax problem relates, renders it unlikely that a solution to the latter will be attempted except by means of careful legislation. To interpret the existing tax laws as having made provision for the deduction of campaign expenditures from income would create difficulties hard to resolve, without benefit of legislative consideration or statutory guidance. That the pertinent statutory provisions are to the contrary, is the burden of the pages which follow.

II

THE TAXPAYER'S CAMPAIGN EXPENDITURES WERE NEITHER DEDUCTIBLE EXPENSES NOR A DEDUCTIBLE LOSS

It is a familiar principle that a taxpayer seeking a deduction has the burden of clearly showing

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fore the 1942 amendment. Ruling of the Income Tax Bureau, 1-27-22, summarized in N. Y. PH par. 55,830.

South Dakota. Regulations, Art. 2605, S. D. PH par. 10,580; S. D. Code (1939) §§ 57.2604 (1), 57.2605 (e1), S. D. PH par. 12,532, 12,544.

the existence of a right to that deduction under a specific provision of the statute. *Interstate Transit Lines* v. *Commissioner*, 319 U. S. 590, 593; *White* v. *United States*, 305 U. S. 281, 292; *New Colonial Co.* v. *Helvering*, 292 U. S. 435, 440. We submit that the courts below were correct in holding that the present taxpayer has failed to sustain that burden.

As will appear, moreover, the questions of statutory interpretation here involved turn upon the meaning of phrases which have long appeared in the tax statutes and which have a legislative history known to tax authorities. These questions, therefore, although they present issues of law, *Commissioner* v. *Heininger*, 320 U. S. 467, involve issues which the Tax Court, "informed by experience and kept current with tax evolution and needs by the volume and variety of its work," has "special competence" to determine, with resulting "weight to * * * [its] decision." *Dobson* v. *Commissioner*, 320 U. S. 489, 502.

a. *The taxpayer's campaign expenditures were not expenses paid or incurred in carrying on a trade or business within the meaning of Section 23 (a) (1) (A).*

To establish that disbursements of his campaign fall within the provision of Section 23 (a) (1) (A) of the Internal Revenue Code (Appendix A, *infra*), the taxpayer must establish that they were "ordinary and necessary expenses paid or incurred * * * in carrying on any trade or

business." They must be directly relating to carrying on business (Sec., 19.23 (a)-1, Treasury Regulation 103 (Appendix A, *infra*); *Higgins* v. *Commissioner*, 312 U. S. 212) and outside the prohibition of Section 24 (a) (1) (Appendix A, *infra*) upon the deduction of "personal" expenses.

Admittedly the term "trade or business" includes the performance of the functions of a public office. Section 48 (d), Internal Revenue Code (Appendix A, *infra*). But plainly the taxpayer's contributions to the county fund and the direct expenses of his own campaign were incurred in seeking office, and not in performing any function of the office which he held.

Campaigning for nomination and election to public office does not constitute the carrying on of any trade or business. The functions of the office sought cannot be carried on, nor can there be any right to the emoluments thereof, until the electorate has signified its choice. Not all activities resulting in income constitute a trade or business (*Van Wart* v. *Commissioner*, 295 U. S. 112); and within the common understanding of the term (see *Welch* v. *Helvering*, 290 U. S. 111; *Commissioner* v. *Heininger*, 320 U. S. 467) candidacy is not a trade or business but simply a process whereby the candidate, and any supporters he may have, seek to persuade the electorate to vote the candidate into office. The candidate receives no compensation for being a candidate. It is true that, as in this case, the candidate normally re-

ceives "political gifts" intended to assist in the process of nomination and election;[18] but obviously securing contributions is not his business, and the contributions do not constitute income to the candidate.[19] Since being a candidate is not a busi-

[18] Complete statistics on the financial arrangements of a representative number of political campaigns are not available. Apparently the most nearly complete are those obtained in response to questionnaires sent out by a special committee of the Senate relating to the contributions and expenditures in the various senatorial races in primaries and in the general election in 1938. S. Rep. No. 1, 76th Cong., 1st Sess., pp. 4, 43, 45. With the exception of questionnaires sent to a few minor candidates and those sent to several candidates who either died or withdrew, all questionnaires were filled out and returned. *Idem*, p. 4. The information received is tabulated in Appendix V of the report, which shows that 212 candidates who participated in campaigns in 34 states reported total expenditures of $1,415,922.94 and total contributions of $1,078,862.83. Thus the average of reported expenditures by the candidates was $6,678.88, and the average of the reported contributions received was $5,089.08. These figures include sums received and spent both by the candidates themselves and by others with their knowledge and consent.

[19] I. T. 3276, 1939–1 Cum. Bull. 108. Earlier rulings were to the same effect, but were not published because it was believed that the matter was of insufficient general interest to warrant publication.

On the other hand, the contributions are not deductible by the contributors. I. T. 3276, *supra;* Sections 19.23 (o)–1 (Appendix A, *infra*) and 19.23 (q)–1, Treasury Regulations 103. Compare the rejection of the proposal made to embody in the Revenue Act of 1924 a provision requiring taxpayers to report political contributions in their income tax returns. 65 Cong. Record, Part 3, p. 2948; Part 4, p. 3271; Part 7, p. 6456.

If candidacy were regarded as a trade or business or profession, the contributions would constitute income to the

ness, the expenditures are not ordinary and necessary expenses of carrying on a business.

Campaign expenses fall under the prohibition of Section 24 (a) (1) upon the deduction of "personal" expenses. That prohibition is in addition to the prohibitions contained in the same section upon the deduction of "living" and "family" expenses, and extends beyond them. See *Kornhauser* v. *United States*, 276 U. S. 145, 152. One of its principal applications is to the expenses of the individual in preparing or qualifying himself for employment or for the practice of a profession. Thus it forbids the deduction of such expenses as those of securing training and education for gainful employment,[20] including the expenses of qualified practitioners in taking post-graduate courses to enhance their standing and skill,[21] fees for bar examinations and for admission to the bar, and similar expenses,[22] and expenses entailed in traveling to seek or enter upon employment.[23] Present regulations expressly prohibiting the de-

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candidate and should be deductible by those who participate through making them.

[20] *Darling* v. *Commissioner*, 4 B. T. A. 499, 503; cf. *Driscoll* v. *Commissioner*, 4 B. T. A. 1008. See also, *Welch* v. *Helvering*, 290 U. S. 111, 115–116.

[21] O. D. 892, 4 Cum. Bull. 209 (1921); O. D. 984, 5 Cum. Bull. 171 (1921). See also discussion, *infra*, pp. 24–25.

[22] O. D. 452, 2 Cum. Bull. 157 (1920); cf. *Tinkoff* v. *Commissioner*, 120 F. 2d 564 (C. C. A. 7th), extension of time for certiorari denied, 314 U. S. 581.

[23] S. M. 1048, 1 Cum. Bull. 101 (1919); O. D. 451, 2 Cum. Bull. 157 (1920); I. T. 1397, I–2 Cum. Bull. 145 (1922);

duction of such expenses, including campaign expenses (Sec. 19.23 (a)–15, Treasury Regulations 103, as amended (Appendix A, *infra*)), reflect earlier rulings and decisions. See O. D. 864, 4 Cum. Bull. 211, Appendix B, *infra*.[24] In general, the prohibition upon the deduction of "personal" expenses extends to all expenses which are merely preparatory to the acquisition of a gainful occupation.[25]

Sullivan v. *Commissioner*, 1 B. T. A. 93; cf. *Bixler* v. *Commissioner*, 5 B. T. A. 1181.

[24] There was no occasion for any broader ruling with respect to campaign expenditures than one applicable to Senators and Congressmen, since the salaries of state officials were not taxed prior to the Public Salary Tax Act of April 12, 1939, 53 Stat. 574, c. 59, Sec. 1. Expenses incident to the production of nontaxable income are not deductible. *Lyeth* v. *Commissioner of Internal Revenue*, 47 F. 2d 32 (C. C. A. 3); Sec. 24 (a) (5), Internal Revenue Code, 26 U. S. C., Supp. III, Sec. 24 (a) (5).

[25] *Cf. Tinkoff* v. *Commissioner*, *supra*, which denied a deduction for the expenses of seeking to expunge an order of the Treasury Department suspending the taxpayer from practice; and *Lloyd* v. *Commissioner*, 55 F. 2d 842 (C. C. A. 7th), which denied a business man a deduction for expenses of a suit against a person who had slandered his integrity.

Denny v. *Commissioner*, 33 B. T. A. 738, and *Hutchison* v. *Commissioner*, 13 B. T. A. 1187, relied upon by the taxpayer, afford him no support. In each case the taxpayer had contracted to render particular services, the performance of which necessitated maintaining physical fitness; the expenditures were made in so doing. Moreover, in *Evans* v. *Commissioner*, unreported memorandum opinion of the Board of Tax Appeals, dated March 8, 1939, cited by the taxpayer, an actress whose contract provided for her suspension in the event of physical disability was denied a deduction for medical expenses incurred at the direction of her employer. The

Expenditures of the character just described have sometimes been regarded as capital expenditures [*] and as such not deductible as business expenses. In fact the court below considered that the expenditures here were of that class. There is an analogy to capital expenditures in the sense that the hoped-for benefits will normally extend over a period of years or indefinitely, if actually realized, and the expenditures here may be disallowed for that reason; but we think the expenses of preparing for or seeking employment are most accurately characterized as personal expenses, which may not

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Board said that the doctrine of the *Hutchison* and *Denny* cases was limited to the particular facts therein considered. See also, *Sparkman* v. *Commissioner*, 112 F. 2d 774 (C. C. A. 9th). The taxpayer stresses allowance by the Board in the *Evans* case of travel expenses paid by the taxpayer-actress in sending her mother abroad for the purpose of negotiating a European contract for the actress. We think there is a great difference, however, between the case of an actress, whose business entails the constant negotiation of new contracts, and whose present employment frequently depends upon the demand by others for her future services, and a judge who comes up for election but once in ten years and whose existing employment is in no way affected by his prospects of future employment.

[*] Mr. Justice Cardozo stated for a unanimous Court in *Welch* v. *Helvering*, *supra*, pp. 115–116, that—

"Reputation and learning are akin to capital assets, like the good will of an old partnership. * * * For many, they are the only tools with which to hew a pathway to success. The money spent in acquiring them is well and wisely spent. It is not an ordinary expense of the operation of a business."

be deducted. Moreover, in so far as petitioner's expenditures consisted of contributions to the county fund, as distinguished from expenses directly incurred by the taxpayer, their deduction would seem to fall under the further express prohibition of Section 19.23 (o)–1 of Treasury Regulations 103 (Appendix A, *infra*).

We submit that candidates for public employment are not different from candidates for any other employment and that all of the campaign expenses here involved fall within the category of nondeductible expenses. Section 19.23 (a)–15, Treasury Regulations 103, as amended (Appendix A, *infra*) has correctly taken the position that the campaign expenses of a candidate for public office are not deductible.

A candidate who holds the expiring term and seeks election to the next term does not stand in a different position from a new aspirant. The fact of incumbency is clearly immaterial. Discharge of the duties of an existing term of office and the receipt of the emoluments thereof in no way require that the incumbent seek election to the next term. The taxpayer's argument would have this Court attribute to the Congress an intention to accord incumbents of elective offices, local, state, or Federal, special treatment with respect to the expenses of campaigning for nomination or election to succeed themselves. This would be at

striking variance with the fundamental assumption of the elective process that the law shall not discriminate between candidates in regard to their opportunities to present themselves to the electorate. Clear words would be required to produce such a result, and they are wanting. On the contrary, Congress has acquiesced in an administrative construction of the pertinent statutory provisions which has obtained for more than twenty-three years, to the effect that there may be no deduction for campaign expenses of any sort.

Shortly after the 1920 elections, the Bureau of Internal Revenue published a ruling that a Congressman could not deduct the expenses of his campaign which he himself defrayed, since they were "personal" expenses. O. D. 864, 4 Cum. Bull. 211 (1921) (Appendix B, *infra*). This ruling was plainly in accord with rulings as to candidates for other occupations and professions and seems clearly to have met with the approval of Congress.

In enacting the Revenue Act of 1921 several months later, Congress considered and adopted an amendment to the section dealing with business expenses. It had been ruled that the provision in the law as it then existed for the deduction of only "the ordinary and necessary expenses paid or incurred * * * in carrying on any trade or business" did not permit deduction

of the total expenses of commercial travelers for meals and lodging while away from home." Specific provision was therefore made in the Revenue Act of 1921 for the deduction of such expenses.[28] The administrative ruling, recently published, that the expenses of seeking public office were not deductible, was in no way questioned at that time.[29] In numerous successive Revenue Acts, Congress reenacted the governing statutory provisions in terms identical with those of the 1921 Act.[30]

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[27] Article 292, Treasury Regulations 45, promulgated under the Revenue Act of 1918, as amended by T. D. 3101, 3 Cum. Bull. 191 (1920).

[28] Section 214 (a) (1) of the Revenue Act of 1921, c. 136, 42 Stat. 227, amending Section 214 (a) (1) of the Revenue Act of 1918, c. 18, 40 Stat. 1057. See statement of Congressman Hawley, 61 Cong. Record, Part 5, p. 5201; H. Rep. No. 350, 67th Cong., 1st Sess., p. 11 (1939–1 Cum. Bull. (Part 2) 168, 177); S. Rep. No. 275, 67th Cong., 1st Sess., p. 14 (1939–1 Cum. Bull. (Part 2) 181, 191).

[29] *Cf.* 61 Cong. Record, Part 7, pp. 6672–6673.

[30] Sections 214 (a) (1) and 215 (a) (1) of the Revenue Act of 1924, c. 234, 43 Stat. 253; Revenue Act of 1926, c. 27, 44 Stat. 9; Sections 23 (a) and 24 (a) (1) of the Revenue Act of 1928, c. 852, 45 Stat. 791; Revenue Act of 1932, c. 209, 47 Stat. 169; Revenue Act of 1934, c. 277, 48 Stat. 680; Revenue Act of 1936, c. 690, 49 Stat. 1648; Sections 23 (a) (1) and 24 (a) (1) of the Revenue Act of 1938, c. 289, 52 Stat. 447; and of the Internal Revenue Code. The language of Section 23 (a) (1) of the Internal Revenue Code was reenacted as Section 23 (a) (1) (A) by Section 121 of the Revenue Act of 1942, c. 619, 56 Stat. 798 (26 U. S. C. 1940 ed., Supp. III, Sec. 23), discussed *infra*, pp. 32–33.

The attitude of Congress toward broadening the scope of these provisions is further indicated by its deliberations upon the Revenue Acts of 1926 and 1928. Congress rejected a proposal to include in the Revenue Act of 1926 a provision that members of professions be allowed to deduct the expenses of attending professional meetings and the expenses of postgraduate courses taken to advance their professional standing.[31] A similar proposal was made in connection with the Revenue Act of 1928,[32] at a time when there was pending in the Board of Tax Appeals a case involving the campaign expenses of Senator David A. Reed. In 1922 Senator Reed, then a practicing lawyer, had successfully run on the Republican ticket for election as United States Senator from Pennsylvania, and had paid certain amounts to the State and county committees which were promoting the party ticket. He sought to deduct those amounts as expenses of carrying on a trade or business. He apparently did not attempt to deduct any other campaign expenses, nor, on the other hand, did he

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[31] Hearings before the Committee on Ways and Means on Revenue Revision, 1925, 69th Cong., 1st Sess., pp. 204–210; 67 Cong. Record, Part 3, pp. 3022–3023; Part 4, p. 3789.

[32] Hearings before the Committee on Ways and Means on Revenue Revision, 1927–1928, 70th Cong., 1st Sess., pp. 333–338; Hearings before the Committee on Finance on Revenue Act of 1928, 70th Cong., 1st Sess., pp. 135–152; Section 23 (a) of H. R. 1, 70th Cong., 1st Sess., as passed by the Senate; 69 Cong. Record, Part 8, pp. 9054–9056.

return as income any contributions received.[33] The Commissioner disallowed the claimed deduction. Despite the pendency of this case before the Board of Tax Appeals, no suggestion was made in Congress during the consideration of the Revenue Act of 1928 that the law be amended to allow the deduction of campaign expenses of any sort. The proposal which was made with respect to the members of professions was rejected, after extended consideration, on the ground that it would broaden to an indeterminate extent the scope of exemptions allowed under existing law.[34]

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[33] Senator Reed's income tax return was not put into the record, but the sole question litigated was that of the deductibility of the payments to party funds.

[34] 69 Cong. Record, Part 8, pp. 9053–9056; Part 10, p. 10133; H. Conference Rep. No. 1882, 70th Cong., 1st Sess., p. 11 (amendments 26, 27 and 28) (1939–1 Cum. Bull. (Part 2) 444, 445).

Shortly after the enactment of the 1928 Act, the Board of Tax Appeals held that a physician might deduct expenses incurred in attending a convention of a medical association of which he was a member. *Jaek v. Commissioner*, 13 B. T. A. 726. The Board had previously rendered similar decisions with respect to members of other professions. *Shutter* v. *Commissioner*, 2 B. T. A. 23; *Silverman* v. *Commissioner*, 6 B. T. A. 1328. The theory on which such expenses are held allowable is that they directly affect income from the profession. This is illustrated by *Ellis* v. *Commissioner*, 15 B. T. A. 1075, 50 F. 2d 343 (App. D. C.), in which a lawyer was allowed to deduct expenses incurred in attending a meeting of the American Bar Association, of which he was a member, but was not allowed to deduct the expenses of a trip to Europe as a member of a special committee of the

Shortly after the enactment of the 1928 Act, the Board of Tax Appeals announced its opinion in *Reed* v. *Commissioner*, 13 B. T. A. 513, reversed on another issue, 34 F. 2d 263 (C. C. A. 3d), reversed, 281 U. S. 699. The Board held against the deductibility of Senator Reed's payments to the party funds, on the ground that running for office is only preparatory to carrying on the business of discharging the duties of an office and is not part of the business itself. Senator Reed did not seek review of the Board's decision upon this issue, although he sought and obtained review of another and unrelated issue in the case. The statutory provisions involved were again reenacted in Sections 23 (a) and 24 (a) (1) of the Revenue Act of 1932, 47 Stat. 169, c. 209, without challenge to the rule that campaign expenses are not deductible. They were similarly reenacted in the Revenue Act of 1934, 48 Stat. 680, c. 277.

In the proceedings leading to the enactment of the Revenue Act of 1934, members of Congress expressed dissatisfaction with rulings by the Bureau of Internal Revenue that certain expenses incurred in the discharge of their functions, such as salaries paid out of their own pockets to extra clerks in their offices, could not be deducted. Ac-

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Association to secure first-hand information on criminal procedure and law enforcement, although it was recognized that this would enhance his professional standing.

cordingly it was proposed to enact a provision which would permit the deduction of such expenses. The proposal was expressly said to "have nothing to do" with campaign expenses.[35] The outcome was the enactment of a new provision defining the term "trade or business" to include "the performance of the functions of a public office." Section 48 (d) of the Revenue Act of 1934. The express limitation of this provision to the performance of the functions of the office itself clearly affirmed the existing rule that the expenses of seeking the office were not deductible. This, as well as the other statutory provisions in question, has been repeatedly reenacted without change.[36]

Lindsay v. *Commissioner*, 34 B. T. A. 840 (1936) was decided under the Revenue Act of 1932, which did not contain any provision defining "trade or business" as including the performance of the functions of a public office. The Board of Tax Appeals held that the expenses of an incumbent Congressman incurred in returning to his district to keep in touch with his constituents were expenses of a campaign for reelection and hence not deductible. While it may be doubted that such expenses would be regarded as cam-

[35] Hearings before the Committee on Finance, 73d Cong., 2d Sess., on H. R. 7835, Part 1, March 6, 1934, p. 29.

[36] See Sec. 48 (d) of the Revenue Acts of 1936 and 1938 and of the Internal Revenue Code (26 U. S. C. 1940 ed., Sec. 48). See also footnote 12, *supra*.

paign expenses under Section 48 (d) as amended in 1934, the case remains authority for the proposition that the expenses of a campaign for reelection, like the expenses of campaigning for election for the first time, are not deductible.

We think it plain that under the usual canons of statutory interpretation the long-standing administrative construction of the statute by the Commissioner, and the implied approval thereof by Congress, must be given effect in this case. *White* v. *Winchester Club*, 315 U. S. 32; *Helvering* v. *Griffiths*, 318 U. S. 371.

If, as the taxpayer contends, running for office constitutes the carrying on of a trade or business, contributions made to help defray the campaign expenses of the candidate would normally constitute income to him; for they would be "gains, profits, and income derived from * * * the transaction of * * * [a] business carried on for gain or profit, or gains or profits and income derived from" a definite source (Internal Revenue Code, Sec. 22 (a), 26 U. S. C. Sec. 22 (a), rather than gifts not connected with a business (*Idem*, Sec. 22 (b) (3).[37] *Cf.* Section 19.22 (a)–2, Treasury Regulations 103; *United States* v. *Sullivan*, 274 U. S. 259. In the present case the taxpayer defrayed part of his campaign expenses from money contributed to him for that purpose (R. 30a). Although he sought to deduct the en-

[37] See fn. 19, p. 17, *supra*.

tire amount of the campaign expenses, he did not return the money contributed as income (R. 105a, 29a). Consistently with his determination that the campaign expenses were not deductible, the Commissioner has not asserted that the money contributed was income (R. 8a–9a).

b. *The taxpayer's campaign expenditures were not deductible as expenses paid or incurred for the production or collection of income within the meaning of Section 23 (a) (2).*

Enactment of Section 23 (a) (2) (Appendix A, *infra*) by Section 121 of the Revenue Act of 1942, 56 Stat. 798, upon which the taxpayer relies alternatively, adds nothing to his case. The salary of the term of office to which he sought election was unquestionably business income, and any expense properly deductible because it was incurred in earning such income would be deductible independently of the enactment of Section 23 (a) (2). The latter section adds nothing to the grounds upon which business expenditures may be deducted; the issue remains whether petitioner's campaign expenses fall in this category.

The 1942 amendment rendered deductible a category of expenditures, entered into for the production of income or the management, conservation, or maintenance of property held for the production of income, which this Court had determined not to be business expenses and therefore not deductible under the previous statute

Van Wart v. *Commissioner*, 295 U. S. 112; *Higgins* v. *Commissioner*, 312 U. S. 212. The purpose of the amendment is clear from its legislative history. It was simply and solely to change the rule, which was thought to be inequitable, that expenses incurred in the production of taxable nonbusiness income, which were of the same variety as deductible business expenses, could not be deducted. The amendment did not enlarge the concept of trade or business or expand the category of business expenses, nor did it create a vague new category of deductible expenditures which would in effect have amended the express prohibition of Section 24 (a) (1) upon the deduction of "personal" expenses.

Had Congress intended to provide for the deduction of personal expenses incident to an attempt to acquire a status which, if acquired, would lead to the earning of business income, it would have given the matter explicit consideration and would have used words appropriate to that end, amending the provision for deduction of business expenses. That Congress had no such intention is confirmed by the history of the 1942 amendment.

Before the decision of this Court in *Higgins* v. *Commissioner*, 312 U. S. 212, it was debatable whether the category of business expenses included the expenses of producing taxable income from property and investments. The Bureau of Internal Revenue had ruled in 1934, as a result of lower court decisions, that business expenses did

include "all the ordinary and necessary expenses paid or incurred in the production of taxable income," [38] such as the costs of bookkeeping, stenographic work, office and safety vault rent, and fees paid to attorneys.[39] In *Van Wart* v. *Commissioner*, 295 U. S. 112 (1935), this Court sustained the Commissioner of Internal Revenue in denying the deductibility of an attorney's fee for conducting litigation to secure taxable income from a trustee who was withholding it. In 1938 a subcommittee of the House Ways and Means Committee recommended that provision be made to allow deductions for expenses such as those involved in the *Van Wart* case.[40] The recommendation was not adopted in the 1938 Act, and the matter rested until after the decision of the *Higgins* case. In that case this Court expressly held counter to the rulings of the Bureau stated above, in so far as they related to the expenses of managing investments in securities. The decision was placed solely upon the ground that an individual's activities in managing such investments did not constitute the carrying on of a trade or business and that, consequently, no basis existed for permitting their deduction.

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[38] I. T. 2751, XIII-1 Cum. Bull. 43, 44 (1934).

[39] See rulings cited in *Higgins* v. *Commissioner*, *supra*, p. 215, note 11.

[40] Report of Subcommittee, Committee on Ways and Means, Revenue Revision, 75th Cong. 3rd Sess., pp. 46–47.

As a result of the *Higgins* decision, the Treasury Department recommended the enactment in the Revenue Act of 1942 of a provision for the deduction of expenses for the production of nonbusiness income.[41] Taxpayer interests suggested that the proposal be changed to cover expressly the expenses of management and conservation of property held for the production of income.[42] The adoption of this suggestion confirmed the administrative construction of the previous law, which this Court recognized as correct in the *Higgins* case, 312 U. S. at p. 214, that the expenses of managing investments in real property were deductible, and also rendered more explicit the authorization for deducting the expense of managing investments in securities. As enacted, therefore, the amendment has two provisions which respond, respectively, to the decisions in the *Van Wart* and *Higgins* cases. Section 23 (a) (2), Internal Revenue Code (Appendix A, *infra*.)

The committee reports on the 1942 amendment expressly state that the deduction of expenses for the production of nonbusiness income is subject to all the restrictions and limitations that apply in the case of a deduction for business expense, except for the requirement of being incurred in

[41] Hearings before Committee on Ways and Means on Revenue Revision, 1942, 77th Cong., 2d Sess., Vol. 1, p. 88; Hearings before Committee on Finance on Revenue Act of 1942, 77th Cong., 2d Sess., p. 50.

[42] Hearings before Committee on Ways and Means on Revenue Revision, 1942, 77th Cong., 2d Sess., Vol. 3, p. 2763.

connection with a trade or business. H. Rep. No. 2333, 77th Cong., 2d Sess., p. 75 (Appendix B, *infra*); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 88 (Appendix B, *infra*). The amendment was regarded by its proponents as filling a gap, disclosed by the decisions to exist, between the categories of business expenses and personal expenses; and these categories would not be affected by it.[43] The regulations issued under the 1942 amendment shortly after its enactment adopt this view and, therefore, expressly negative the deductibility of the campaign expenses of candidates for public office. Section 19.23 (a)–15 of Treasury Regulations 103, as added by T. D. 5196, 1942–2 Cum. Bull. 96 (Appendix A, *infra*). Court decisions under the 1942 amendment have uniformly held that it did not restrict the scope of the prohibition of Section 24 (a) (1) upon the deduction of the "personal" expenses which have been involved in the cases. *Amerise* v. *Commissioner,* 1 T. C. 1108; *Levy* v. *Commissioner,* decided December 17, 1942 (P–H T. C. Memorandum Decisions, par. 42,645); cf. *Bowers* v. *Lumpkin,* 140 F. 2d 927 (C. C. A. 4), certiorari denied May 29, 1944; *Helvering* v. *Stormfeltz* (C. C. A. 8), decided June 3, 1944 (1944 P–H, par. 62,597).

c. *The taxpayer's campaign expenditures did not constitute a deductible loss under Section 23 (e).*

[43] Hearings before Committee on Ways and Means on Revenue Revision, 1942, 77th Cong., 2d Sess., Vol. 3, p. 2802.

The taxpayer sustained no loss deductible under the provisions of Section 23 (e) of the Internal Revenue Code (Appendix A, *infra*), relating to losses sustained in trade or business or transactions entered into for profit. The loss provisions do not apply to all out-of-pocket disbursements for which the taxpayer receives no immediate tangible benefit. *Kornhauser* v. *United States*, 276 U. S. 145, 152. The taxpayer did not lose the expenditures here in question or fail wholly to derive advantage from them; he engaged in making them, and he received resulting benefits, even if not all that he hoped for. As we have shown, the expenditures were "personal" expenses. Section 24 (a) (1) of the Internal Revenue Code forbids the deduction of such expenses "in any case," and they may not be deducted in the guise of a loss. *Driscoll* v. *Commissioner*, 4 B. T. A. 1008; 5 Mertens, *Law of Federal Income Taxation* (1942), Section 28.45.

The taxpayer assumes that since he lost the election, all that he spent to win it was necessarily lost. That assumption is in no way supported by proof, and indeed is contrary to common experience. One who comes as close to election as did the taxpayer normally gains from the contest personal and political standing of great although usually unmeasurable value. Deductions may be taken only for losses not compensated "by insurance *or otherwise*" (italics supplied). Section 23 (e), Internal Revenue Code.

The taxpayer has failed to give any consideration to the "salvage value" of his undertaking, as required by the applicable regulation. Section 19.23 (e)–1, Treasury Regulations 103. He therefore is entitled to no deduction for a loss. *Cf. Crowley* v. *Commissioner,* 89 F. 2d 715 (C. C. A. 6th); *Coalinga-Mohawk Oil Co.* v. *Commissioner,* 64 F. 2d 262 (C. C. A. 9th), certorari denied, 290 U. S. 637; *Schuman Piano Co.* v. *Commissioner,* 10 B. T. A. 118; *Lawrence & Co.* v. *Commissioner,* 1 B. T. A. 1202.

In any event the taxpayer is in error in asserting a loss to the extent that the expenses claimed as a loss were met from money contributed to him for the campaign. From the standpoint of the legislative problem to which the taxpayer calls attention, moreover, a deduction based upon the loss theory would result in a manifest absurdity, for it would permit campaign expenses to be deducted by a losing candidate but not by one who was successful in the election. This form of discrimination is itself a strong reason for the conclusion that Section 23 (e) of the Internal Revenue Code has no application to the case of a candidate for elective office.

III

THE TAX COURT DID NOT ERR IN EXCLUDING EVIDENCE AND IN MAKING FINDINGS OF FACT

The taxpayer's assignment of error in these regards (Pet. 5) apparently relates to the ques-

tion whether the expenses in question were "ordinary and necessary" in the sense of being essential expenses of common occurrence in political campaigns. For reasons stated at length above, we believe that no expenses of a political campaign are deductible, however ordinary and necessary they may be according to the standards laid down in cases such as *Welch* v. *Helvering*, 290 U. S. 111, and *Deputy* v. *duPont*, 308 U. S. 488. In our view it is therefore unnecessary to consider this assignment of error.

CONCLUSION

The judgment below should be affirmed. If, however, this Court should be of the contrary opinion, the case should be remanded for further proceedings to determine the effect upon the taxpayer's liability of the contribution received and used by the taxpayer to defray part of the expenses sought to be deducted.

Respectfully submitted.

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OCTOBER 1944.

APPENDIX A

Internal Revenue Code:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [as amended by Section 121 of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Expenses.*—

(1) *Trade or Business Expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; * * *.

(2) *Non-Trade or Non-Business Expenses.*—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

* * * * *

(e) *Losses by Individuals.*—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction en-

tered into for profit, though not connected with the trade or business; * * *.

* * * * * *

(26 U. S. C. 1940 ed., Sec. 23.)

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses; * * *

* * * * * *

(26 U. S. C. 1940 ed., Sec. 24.)

SEC. 48. DEFINITIONS.

When used in this chapter—

* * * * * *

(d) *Trade or Business.*—The term "trade or business" includes the performance of the functions of a public office. (26 U. S. C. 1940 ed., Sec. 48.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.23(a)-1. *Business expenses.*—Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business. * * *.

SEC. 19.23(a)-5. *Professional expenses.*—A professional man may claim as deductions the cost of supplies used by him in the practice of his profession, expenses paid in the operation and repair of an automobile used in making professional calls, dues to professional societies and subscriptions to professional journals, the rent paid for office rooms, the cost of the fuel, light, water, telephone, etc., used in such offices, and the hire of office assistants. Amounts

currently expended for books, furniture, and professional instruments and equipment, the useful life of which is short, may be deducted.

SEC. 19.23(a)–15. [as added by T. D. 5196, 1942–2 Cum. Bull. 96.] *Nontrade or nonbusiness expenses.*—

* * * * * *

(b) Except for the requirement of being incurred in connection with a trade or business, a deduction under this section is subject to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an expense paid or incurred in carrying on any trade or business. This includes restrictions and limitations contained in section 24, as amended. * * *

Capital expenditures, and expenses of carrying on transactions which do not constitute a trade or business of the taxpayer and are not carried on for the production or collection of income or for the management, conservation, or maintenance of property held for the production of income, but which are carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses. * * *

Among expenditures not allowable under section 23 (a) (2) are the following: Commuters' expenses; * * * expenses in seeking employment or in placing oneself in a position to begin rendering personal services for compensation, campaign expenses of a candidate for public office, bar examination fees and other expenses incurred in securing admission to the bar, and corresponding fees and expenses incurred by physicians, dentists, account-

ants, and other taxpayers for securing the right to practice their respective professions.

* * * * * *

SEC. 19.23(o)–1. *Contributions or gifts by individuals.*—

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* * * contributions for campaign expenses, are not deductible from gross income.

* * * * * *

APPENDIX B

S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 87–88:

SECTION 121. *Non-trade or Non-business Deductions*

This section is the same as section 118 of the House bill, except that subsections (c) of that section has been omitted therefrom and now appears as section 163 and a clerical amendment has been made in subsection (b). The amendment made by this section allows a deduction for the ordinary and necessary expenses of an individual paid or incurred during the taxable year *for the production and collection of income, or for the management, conservation, or maintenance of property held by the taxpayer for the production of income,* whether or not such expenses are paid or incurred in carrying on a trade or business, and also allows a deduction for the exhaustion and wear and tear (including a reasonable amount for obsolescence) on property held for the production of income, whether or not such property is used by the taxpayer in a trade or business.

For an expense to be deductible under this section, it must have been incurred either (1) for the production or collection of income, or (2) for the management, conservation, or maintenance of property held for the production of income. Ordinary and necessary expenses so paid or incurred are deductible under section 23 (a) (2) even though they are not paid or incurred

for the production or collection of income of the taxable year or for the management, conservation, or maintenance of property held for the production of such income. The term "income" for this purpose comprehends not merely income of the taxable year but also income which the taxpayer has realized in a prior taxable year or may realize in subsequent taxable years, and is not confined to recurring income but applies as well to gain from the disposition of property. Expenses incurred in managing or conserving property held for investment may be deductible under this provision even though there is no likelihood that the property will be sold at a profit or will otherwise be productive of income, and even though the property is held merely to minimize a loss with respect thereto. The expenses, however, of carrying on a transaction which does not constitute a trade or business of the taxpayer and is not carried on for the production of income or for the management, conservation, or maintenance of property, but which is carried on primarily as a sport, hobby, or recreation are not allowable as non-trade or non-business expenses.

Expenses, to be deductible under section 23 (a) (2), must be ordinary and necessary, which rule presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of income, or to the management, conservation, or maintenance of property held for that purpose.

A deduction under this section is subject, except for the requirement of being incurred in connection with a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an

expense paid or incurred in carrying on any trade or business. * * *

* * * * *

H. Rep. No. 2333, 77th Cong. 2d Sess., pp. 74–75:

SECTION 118. *Non-trade or Non-business deductions.*

This amendment allows a deduction for the ordinary and necessary expenses of an individual paid or incurred during the taxable year for the production and collection of income, or for the management, conservation, or maintenance of property held by the taxpayer for the production of income, whether or not such expenses are paid or incurred in carrying on a trade or business, and also allows a deduction for the exhaustion and wear and tear (including a reasonable amount for obsolescence) on property held for the production of income, whether or not such property is used by the taxpayer in a trade or business.

For an expense to be deductible under this section, it must have been incurred either (1) for the production or collection of income, or (2) for the management, conservation, or maintenance of property held for the production of income. Ordinary and necessary expenses so paid or incurred are deductible under section 23 (a) (2) even though they are not paid or incurred for the production or collection of income of the taxable year or for the management, conservation, or maintenance of property held for the production of such income. The term "income" for this purpose comprehends not merely income of the taxable year but also income which the taxpayer has realized in a prior taxable year or may realize in subsequent taxable years, and is

not confined to recurring income but applies as well to gain from the disposition of property. Expenses incurred in managing or conserving property held for investment may be deductible under this provision even though there is no likelihood that the property will be sold at a profit or will otherwise be productive of income. The expenses, however, of carrying on a transaction which does not constitute a trade or business of the taxpayer and is not carried on for the production of income or for the management, conservation, or maintenance of property, but which is carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses.

Expenses, to be deductible under section 23 (a) (2), must be ordinary and necessary, which rule presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of income, or to the management, conservation, or maintenance of property held for that purpose.

A deduction under this section is subject, except for the requirement of being incurred in connection with a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an expense paid or incurred in carrying on any trade or business.

* * * * * *

O. D. 864, 4 Cum. Bull. 211 (1921):

The expenses incurred by a Congressman in making trips of a personal nature are personal expenses which are not deductible. Any excess of mileage allowance over the actual expenses for railroad fares in mak-

ing trips for which such an allowance is made should be returned as income. Expenditures for meals and lodging incurred by a Member of Congress in coming to and returning from the sessions of Congress, in excess of any expenditures ordinarily required for such purposes when at home, are deductible.

If a Congressman brings his wife or other members of his family with him their traveling expenses are personal expenses which are not deductible.

If a Congressman makes a trip to or from Washington on official business by rail or otherwise, for example, by automobile, the actual expenses in excess of the expenditures ordinarily required for meals and lodging while at home are deductible provided he made the trip alone. If accompanied by one or more persons, his share of the cost of transportation, and the excess cost of his meals and lodging over their cost if he were home, are deductible.

Inasmuch as Congress is in session the greater part of each year, it is held that a Member of Congress living in Washington during the sessions of Congress, is not during that time on a business trip within the meaning of article 292, Regulations 45, as amended by Treasury Decision 3101, and that his living expenses in excess of the ordinary living expenses if at home are not deductible as a business expense.

Campaign expenses defrayed by a Congressman are not ordinary and necessary expenses incurred in carrying on a trade or business, within the meaning of the statute. Such expenses are held to be personal expenses which are not deductible.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 36.—October Term, 1944.

Michael F. McDonald, Petitioner, vs. Commissioner of Internal Revenue. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 20, 1944.]

Mr. Justice Frankfurter announced the conclusion and judgment of the Court, and an opinion in which the Chief Justice, Mr. Justice Roberts and Mr. Justice Jackson concur.

This is a controversy concerning a deficiency in petitioner's income tax for 1939.

In December 1938, the Governor of Pennsylvania appointed petitioner to serve an unexpired term as Judge of the Court of Common Pleas of Luzerne County. Under Pennsylvania law such an interim judgeship is filled for a full term at the next election. McDonald accepted this temporary appointment with the understanding that he would contest both the primary and general elections. To obtain the support of his party organization he was obliged to pay to the party fund an "assessment" made by the party's executive committee against all of the party's candidates. The amounts of such "assessments" were fixed on the basis of the total prospective salaries to be received from the various offices. The salary of a common pleas judge was $12,000 a year for a term of ten years, and the "assessment" against petitioner was fixed at $8,000. The proceeds from these "assessments" went to the general campaign fund in the service of the party's entire ticket. In addition to this political levy, McDonald also spent $5,017.27 for customary campaign expenses—advertising, printing, travelling, etc. The sum of these outlays, $13,017.27, McDonald deducted as a "reelection expense". The Commissioner of Internal Revenue disallowed the item and notified him of a deficiency of $2,506.77.

In appropriate proceedings before the Tax Court of the United States that Court sustained the Commissioner, 1 T. C. 738, and its decision was affirmed by the Circuit Court of Appeals for the Third Circuit. 139 F. 2d 400. We brought the case here, 321

U. S. 762, to give a definitive judicial answer to an important problem in the administration of the federal income tax.

What class of outlays may, in relation to the federal income tax, be deducted from gross income and in what amount are matters solely for Congress. Our only problem is to ascertain what provisions Congress has made regarding such expenditures as those for which the petitioner claims the right of deduction. The case is not embarrassed by any entanglement with corrupt practices legislation either state or federal.

The materials from which must be distilled the will of Congress are the following provisions of the Internal Revenue Code: § 23 (a) (1) (A); 56 Stat. 798, 819, 26 U. S. C. § 23 (a) (1) (A) (Supp. 1943), in connection with § 24 (a) (1), 26 U. S. C. § 24 (a) (1), and § 48 (d), 26 U. S. C. § 48 (d); § 23 (e) (2), 26 U. S. C. § 23 (e) (2); § 23 (a) (2) as amended by § 121 of the Revenue Act of 1942, 56 Stat. 798, 819.

"All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business" are allowed by § 23 (a) (1) (A) as deductions in computing net income. According to tax law terminology (§ 48 (d) of the Internal Revenue Code) the performance by petitioner of his judicial office constituted carrying on a "trade or business" within the terms of § 23 of the Internal Revenue Code. He was therefore entitled to deduct from his gross income all the "ordinary and necessary expenses" paid during 1939 in carrying on that "trade or business". He could, that is, deduct all expenses that related to the discharge of his functions as a judge. But his campaign contributions were not expenses incurred in being a judge but in trying to be a judge for the next ten years. That is as true of the money he spent more immediately for his own reelection as it is of the "assessment" he paid into the party coffers for the success of his party's ticket. The incongruity of allowing such contributions as expenses incidental to the means of earning income as a judge is underlined by the insistence that payment of the "assessment" levied by the party as a prerequisite to being allowed to be a candidate is deductible as a "business" expense. If such "assessments" for future acquisition of a profitable office are part of the expenses in performing the functions of that office for the taxable year, then why should not the same deduction be allowed for "assessment" against office holders not candidates for imme-

diate reappointment or reelection but who pay such "assessments" out of party allegiance mixed or unmixed by a lively sense of future favors?

In order to disallow them we are not called upon to find that petitioner's outlays come within the prohibition of § 24 of the Internal Revenue Code in that they constituted "Personal . . . expenses". "Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed". *New Colonial Co.* v. *Helvering*, 292 U. S. 435, 440. For these campaign expenses to be deductible, it must be found that they can conveniently come with § 23 (a) (1) (A). To put it mildly, that section is not a clear provision for such an allowance. To determine allowable deductions by the different internal party arrangements for bearing the cost of political campaigns in the forty-eight states would disregard the explicit restrictions of § 23 confining deductible expenses solely to outlays in the efforts or services — here the business of judging — from which the income flows. Compare *Welch* v. *Helvering*, 290 U. S. 111, 115-116.

Petitioner next insists that inasmuch as he was defeated for reelection his campaign expenses constitute a loss incurred in a "transaction entered into for profit" and as such a deductible allowance by virtue of § 23 (e) (2).[1] Such an argument does not deserve more than short shrift. It suffices to say that petitioner's money was not spent to buy the election but to buy the opportunity to persuade the electors. His campaign contribution was not an insurance of victory frustrated by "an act of God" but the price paid for an active share in the hazards of popular elections. To argue that the loss of the election proves that the expense incurred in such election is a deductible "loss" under § 23 (e) (2) is to play with words.

Finally, reliance is placed on an amendment to the Internal Revenue Code, introduced by § 127 of the Revenue Act of 1942, 56 Stat. 798, 819.[2] This amendment was proposed by the Treasury

[1] "*Losses by individuals.* — In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise . . . if incurred in any transaction entered into for profit, though not connected with the trade or business."

[2] "*Non trade or non business expenses.* — In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income."

1 Hearings before Committee on Ways and Means, Revenue Revision, 1942, 77th Cong., 2d Sess., p. 88; "to afford relief for a specifically defined inequitable situation which had become manifest by the decision of the Court in *Higgins* v. *Commissioner*, 312 U. S. 212. In that case this Court held that by previous enactments Congress had made no provision for allowable deductions from profitable transactions not covered by the statutory concept of "business" income. But of course earnings from "the performance of the functions of a public office" had specifically been so covered. § 48 (d).[3] Congress adopted the Treasury proposal for the restricted purpose which originated it. And so here the difficulty is not that petitioner's expenditures related to "non-business" income, and thus were excluded from the legislative scheme before the 1942 Amendment, but that they were not incurred in "carrying on" his "business" of judging. The amendment of 1942 merely enlarged the category of incomes with reference to which expenses were deductible. It did not enlarge the range of allowable deductions of "business" expenses. In short, the act of 1942 in no wise affected the disallowance of campaign expenses as consistently reflected by legislative history, court decision, Treasury practice and Treasury regulations.[4] Nothing whatever in the circumstances attending the adoption of § 121 of the Revenue Act of 1942 warrants the suggestion that Congress unwittingly initiated a radical change of policy regarding campaign expenditures. Every relevant item of evidence bearing upon the history of this amendment precludes the inference that the Treasury without intent and the Congress without appreciation opened wide the door for the allowance of campaign expen-

[3] "*Trade or business.*—The term 'trade or business' includes the performance of the functions of a public office." This amendment, added by the Revenue Act of 1934, 48 Stat. 680, 696, was merely "declaratory of existing law". S. Rep. No. 558, 73d Cong., 2d Sess., p. 29. It had "nothing to do" with campaign expenses. 1 Hearings before Committee on Finance on H. R. 8245, 73d Cong., 2d Sess. (March 6, 1934), p. 29, which continued to be outside deductions allowed by § 23 (a) (1).

[4] "A deduction under this section is subject, except for the requirement of being incurred in connection with a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an expense paid or incurred in carrying on any trade or business". H. Rep. No. 2333, 77th Cong., 2d Sess., p. 45; S. Rep. No. 1631, 77th Cong., 2d Sess., p. 88.

[5] *Reed* v. *Commissioner*, 13 B. T. A. 513, reversed on another ground, 34 F. 2d 283; reversed sub nom. *Lucas* v. *Reed*, 281 U. S. 699; Treas. Reg. 103, § 19.23 (a)-15; Treas. Reg. 103, § 29.0-3; O. D. 864, 4 Cum. Bull. 211 (1921).

ditures as deductible expenses. It surely is not fair to attribute to Congress the reversal of its policy and the enactment of a far-reaching new policy in the absence of any evidence, however tenuous or speculative, that Congress was legislating on the subject.

It is not for this Court to initiate policies as to the deduction of campaign expenses. It is for Congress to determine the relation of campaign expenditures to tax deductions by candidates for public office, under such circumstances and within such limits as commend themselves to its judgment. But we certainly cannot draw intimations of such a policy from legislation by Congress increasingly restrictive against campaign contributions and political activities by government officials. The relation between money and politics generally—and more particularly the cost of campaigns and contributions by prospective officeholders, especially judges—involves issues of far-reaching importance to a democracy and is beset with legislative difficulties that even judges can appreciate. But these difficulties can neither be met nor avoided by spurious interpretation of tax provisions dealing with allowable deductions.

To find sanction in existing tax legislation for deduction of petitioner's campaign expenditures would necessarily require allowance of deduction for campaign expenditures by all candidates, whether incumbents seeking reelection or new contenders. To draw a distinction between outlays for reelection and those for election to allow the former and disallow the latter is unsupportable on reason. It is even more unsupportable in public policy to derive from what Congress has thus far enacted a handicap against candidates challenging existing office holders. And so we cannot recognize petitioner's claim on the score that he was a candidate for reelection.[6]

Even if those conclusions, in the setting of federal income tax legislation, derived less easily than they do from the statutory provisions under scrutiny, we should not be inclined to displace the views of the Tax Court with our own.[7] Of course the Tax Court cannot define the limits of its own authority. And in cases like *Commissioner* v. *Heininger*, 320 U. S. 467, where the Tax

[6] In the interest of accuracy, it is to be pointed out that petitioner was not a candidate for reelection; he was a candidate for election for the first time.

[7] That the Tax Court may, as is sometimes true even of other courts, indulge in needless and erroneous observation is beside the point. See Helvering v. Gowran, 302 U. S. 238, 245-246.

Court mistakenly felt itself bound by superior judicial authority, we must give corrective relief. But, as a system, tax legislation is not to be treated as though it were loose talk or presented isolated abstract questions of law casting upon the federal courts the task of independent construction. Tax language normally has an enclosed meaning or has legitimately acquired such by the authority of those specially skilled in its application. To speak of tax determinations made in the system of review specially designed for federal tax cases as technical is not to imply opprobrium.

Having regard to the controversies which peculiarly call for this Court's adjudication and to the demands for their adequate disposition, as well as to the exigencies of litigation generally, relatively few appeals from Tax Court decisions can in any event come here. That court of necessity must be the main agency for nationwide supervision of tax administration. Whatever the statutory or practical limitations upon the exercise of its authority, Congress has plainly designed that tribunal to serve, as it were, as the exchequer court of the country. Due regard for these considerations is the underlying rationale of *Dobson* v. *Commissioner*, 320 U. S. 489. We are therefore relieved from discussing the numerous cases in which the Tax Court or its predecessor, the Board of Tax Appeals, allowed or disallowed deductions and their bearing on the situation before us. To do so involves detailed analysis of the special circumstances of various "businesses" and expenses incident to their "carrying on". We shall not enter this quagmire of particularities.

Affirmed.

Mr. Justice BURTON concurs in the result.

Mr. Justice BLACK, dissenting.

Petitioner, a lawyer of many years' experience, gave up his practice and accepted appointment as a judge upon condition that he run to succeed himself. In campaigning for reelection he incurred certain campaign expenses. These expenses, according to the Circuit Court of Appeals were "legitimate in their entirety", and "the objective of the expenditures was to obtain a considerable amount of money, over at least a decade of years."

This Court has not reached a contrary conclusion. For our purpose, therefore, we may consider that the expenses were incurred, at least in part, "for the production . . . of income." The literal language of Section 121 of the Revenue Act of 1942, 56 Stat. 798, 819, is broad enough to allow a deduction for expenses so incurred. That statute, which Congress made applicable retroactively, allows the following deductions in computing net income:

"In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income."

Prior to the enactment of this section, taxpayers in computing net income were not allowed deductions from gross income for expenses incurred unless they were "ordinary and necessary expenses paid or incurred . . . in carrying on a trade or business." Congress, by this new section, introduced a new type of deduction, for as the House and Senate Committees said, it allowed ". . . a deduction for the ordinary and necessary expenses of an individual paid or incurred . . . for the production and collection of income . . . ." Before the 1942 Act, an expense to be deductible had to be "ordinary and necessary" in its relationship to the taxpayer's business; under the new section it need only be "ordinary and necessary" in its relationship to the taxpayer's efforts to produce income. Hence, while the words "ordinary and necessary expenses", defining permissible deductions, remained unchanged in the new section, they were given added content in their new relationship. Obviously, Treasury regulations and decisions, limiting the scope of "ordinary and necessary" as applied to business expenses under the old law may be wholly unsuited to define the meaning of these words in their new context, and such rulings and decisions can throw little if any light on the meaning of Section 121. Since the enactment of the new section the two questions essential to determination of deductibility are: Were the expenses incurred in an effort to produce income? Were these expenses, or part of them, "ordinary and necessary" in connection with that effort? These are in most instances pure questions of fact and in cases such as this are to be determined by the tax court. See *Commissioner* v. *Heininger*, 320 U. S. 467, 475. The Tax Court did not make findings of fact on these crucial issues, but categorically denied that campaign expenses could be deducted at all. This, I think, was an erroneous interpretation of Section 121.

The 1942 Act articulated the purpose of Congress to wipe out every vestige of a policy which denied tax deductions for legitimate expenses incurred in producing taxable income. Taxation on net, not on gross, income has always been the broad basic policy of our income tax laws. Net income may be defined as what remains out of gross income after subtracting the ordinary and necessary expenses incurred in efforts to obtain or to keep it. In 1941, this Court upheld in *Higgins* v. *Commissioner of Internal Revenue*, 312 U. S. 212, a finding of the Board of Tax Appeals that one who managed, conserved and maintained his own property was not engaged in a "trade or business" and for this reason was not entitled to deduct expenses incurred in producing his gross income. The effect of this holding was to impair the general Congressional policy to tax only net income. Congress in its Revenue Act of 1942, *supra*, took note of this impairment and indicated in a most forthright manner its allegiance to the net income tax policy. Except for transactions carried on "primarily as a sport, hobby, or recreation," see Senate and House Committee Reports, *supra*, Congress provided a deduction for all ordinary and necessary expenses incurred in the production of income. The language it utilized was certainly far broader than was required to meet the narrow problem presented by the *Higgins* case. Congress specifically disposed of the *Higgins* problem by allowing a deduction for the expenses incurred in "... the management, conservation or maintenance of property held for the production of income." Had Congress simply enacted these words and nothing more, it might properly have been inferred that it intended to grant the type of deduction denied in the *Higgins* case, and no other. But it provided an additional deduction, in the very same section, for expenses incurred "in the production ... of income." To hold, therefore, that Congress in this new section was concerning itself only with the restricted issue created by the *Higgins* case, is to deny any meaning or validity to this latter clause; in a larger sense, such a construction carves out of the section a vital segment which Congress intentionally — so we must assume — put there.

The Court interprets Section 23(a)(1)(A) as not permitting the deductions, without denying that the expenditures were made by petitioner for "the production of income". This interpretation rests in part on the conclusion that the Section in no wise applies to expenses incurred in "business", and that the deduction

claimed by the petitioner were in relation to a "business" explicitly so denominated by § 48(d).[10] The Court's construction would appear to be quite different from that of the House and Senate committees which reported their construction of the measure to their respective bodies. The reports expressly stated that "The Amendment . . . allows a deduction for the ordinary and necessary expenses of an individual incurred during the taxable year for the production and collection of income . . . whether or not such expenses are incurred in carrying on a trade or business." We cannot question the special competence of these two committees to interpret their own legislation. Congress therefore apparently intended to obliterate the legal niceties of the "trade or business" distinction, insofar as they affected deductions for expenses incurred in the "production and collection of income."

The Court's decision is also grounded upon its reference to congressional policy restricting campaign contributions and political activities by government officials. We are not dealing here however, with campaign contributions made by one person to further the candidacy of another. Besides, Congress has not attempted to regulate expenditures of candidates for state office. I can hardly conceive that we should infer that it wanted to penalize through its tax laws, necessary campaign expenses, and thereby condemn a practice of campaigning that is as old as our country and which exists in every state of the Union. Unless our democratic philosophy is wrong, there can be no evil in a candidate spending a legally permissible and necessary sum to approach the electorate and enable them to pass an informed judgment upon his qualifications. This is not, of course, to be taken as denoting approval of corrupt campaign expenditures, or of any of the myriad abuses which beset our systems of election. But we ought not to eviscerate a revenue act, and deny this state official a deduction for expenses incurred in a state election campaign, because Congress has limited campaign contributions in federal elec-

[10] Cf. United States v. Pyne, 313 U. S. 127. If the petitioner is to be denied the benefit of the deduction under the 1942 Amendment (Section 121(a)(2)) on the ground that these expenses were incurred in a "business", then it is difficult to understand why he should be denied the deduction under Section 23(a)(1)(A) of the Internal Revenue Code, which provides deductions for expenses incurred in carrying on a business. On the one hand, the Court denies the deduction because the expenses were incurred in relation to a "business"; on the other hand, the Court denies the deduction as a "business expense" on the ground that his expenses "were not incurred in 'carrying on' his 'business'". This is a distinction without a difference, two phrases with but a single thought.

tions, and passed restrictive legislation against political activities by federal employees.

The Tax Court too relied upon grounds of public policy. It thought it contrary to "the basic ideology underlying the principles of government" to hold that a public office constitutes a "trade or business", although Congress for tax purposes had declared it was. The Tax Court also thought that "under the ban of conscience and . . . public policy is the contention that expenditures made to promote one's candidacy for public office represent expenses 'paid . . . for the production or collection' of income.'" Public officials in this country, many of whom must campaign for election, are almost universally paid for their services. That we do pay our public servants is not at all inconsistent with the fact that public service in a large measure represents an honest expression of the social conscience. Nor does individual dependence upon remuneration for such services detract at all from the high and uncompromising standards of those who perform public duties. Without monetary rewards office-holding would necessarily be limited to one class only, the independently wealthy. Proposals to accomplish such a purpose were deliberately rejected at the very beginning of the Nation's history. I deny the existence of a public policy which, while permitting Congress to tax the income of elected public officials, bars Congress from allowing a deduction for necessary campaign expenses.

It is said that *Dobson* v. *Commissioner*, 320 U. S. 489, gives some support to the Court's decision, and that we should not "displace the views of the Tax Court with our own." Cf. *Security Mills Co.* v. *Commissioner*, 321 U. S. 281. The Court's opinion does exactly that, for it rests in part upon its holding that McDonald as a judge was engaged in "business", while the Tax Court specifically found that he was not. Neither the *Dobson* case nor any other to which the Court's opinion points has indicated that we should automatically accept the Tax Court's construction of a statute, while repudiating the reasons on which its conclusion rested.

State officials all over this nation have been subject to federal income taxes since 1939. When they run for office they must necessarily spend some money to advertise their campaigns. We permit private individuals to deduct expenses incurred in advertising to get business. If this petitioner had owned a factory

the operations of which were suspended because of war contracts, and had advertised goods which he could not presently sell, the expenses of such advertising would have been deductible under Treasury rulings.[2]

So long as campaign expenses spent by candidates are legitimate, ordinary, and necessary, I am unwilling to assume that Congress intended by the 1942 Act to discriminate against the thousands of state officials subject to federal income taxes. The language Congress used literally protects petitioner's right to a deduction; nothing in the legislative history indicates an intent to deny it. Certainly there are abuses in campaign expenditures. But that is a problem that should be attacked squarely by the proper state and federal authorities, and not by strained statutory construction which permits a discriminatory penalty to be imposed on taxpayers who work for the states, counties, municipalities, or the federal government. I think we should reverse and remand this cause to the Tax Court with instructions to pass upon the factual questions which it did not previously determine.

Mr. Justice REED, Mr. Justice DOUGLAS, and Mr. Justice MURPHY join in this dissent.

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[2] I. T. 3581, 1-2 Cum. Bull. 88 (1942); I. T. 3564, 1-2 Cum. Bull. 87 (1942). The following types of expenses have been held to be deductible as business expenses: "... payments by brewers to associations to combat prohibition; railroad contributions to an association conducting a campaign to create favorable public opinion; fees paid to organizations to avoid labor trouble and combat unionization, and also union dues; payments to a fund to fight the boll weevil by a taxpayer in the cotton business; membership fees or dues paid by individuals or corporations to a chamber of commerce or board of trade where the membership is employed as a means of advancing the business interests of the individual or corporation; ... contributions to a chamber of commerce engaged in stimulating and expanding local business; assessments paid by member banks to a clearing house association as a means of furthering their business interests, as well as amounts to be distributed by the association to civic organizations for building up local trade; payments to organizations designed to expand trade; and membership dues paid associations organized to promote the business interests of the members by the collection and dissemination to its members of information and statistics." 4 Mertens, Law of Federal Income Taxation, 505-7, and cases therein cited. For further analogous business expense deductions, see 4 Mertens, *ibid.*, chapter 25.